

**TO: Honorable Anthony J. Scirica, Chair
 Standing Committee on Rules of Practice
 and Procedure**

**FROM: Honorable A. Thomas Small, Chair
 Advisory Committee on Bankruptcy Rules**

DATE: May 27, 2003

**RE: Report of the Advisory Committee on Bankruptcy
 Rules**

I. Introduction

The Advisory Committee on Bankruptcy Rules met on April 3-4, 2003, in Longboat Key, Florida Finally, the Advisory Committee considered amendments to Bankruptcy Rules 1007, 3004, 3005, 4008, 7004, and 9006.

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The Advisory Committee also approved a preliminary draft of proposed amendments to Bankruptcy Rules 1007, 3004, 3005, 4008, 7004, and 9006 and will present those amendments to the Standing Committee at its June 2003 meeting with a request that the proposals be published for comment. The Standing Committee in January 2003 approved for publication an amendment to Rule 4008. The Style Consultant to the Standing Committee and the Style Subcommittee of the Advisory Committee have made stylistic changes to that rule, and this revised version is set out along with the other proposed amendments in Part II C of this Report.

II Action Items

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C. Preliminary Draft of Proposed Amendments to Rules 1007, 3004, 3005, 4008, 7004, and 9006

1. *Synopsis of Proposed Amendments:*

- (a) Rule 1007 is amended to require the debtor in a voluntary case to submit with the petition a list of entities to which notices will be sent in the case. The listed parties are identified as the entities listed or to be listed on Schedules D through H of the Official Forms.
- (b) Rule 3004 is amended to conform the rule to § 501(c) of the Bankruptcy Code. The amendment clarifies that the debtor or trustee may not file a proof of claim until after the time for filing a proof by a particular creditor has expired.

- (c) Rule 3005 is amended to delete any reference to a creditor filing a proof of claim that supersedes a claim filed on behalf of the creditor by a codebtor. The amendment thus conforms the rule to § 501(b) of the Bankruptcy Code.
- (d) Rule 4008 is amended to establish a deadline for filing a reaffirmation agreement with the court. The amendment deletes the former version of the rule that governed the timing of the reaffirmation agreement and discharge hearing. These restrictions on the court's docket are unduly burdensome and the amendment provides the court with the discretion to set and hold these hearings at appropriate times in the circumstances presented in the case.
- (e) Rule 7004 is amended to authorize the clerk specifically to sign, seal, and issue a summons electronically. The amendment does not address the service requirements for a summons which are set out in other provisions of Rule 7004.
- (f) Rule 9006 is amended to clarify that the three-day period is added to the end of the time period for taking action when service is accomplished through certain specified means. This amendment is intended to conform as closely as possible to the amendment being proposed by the Advisory Committee on Civil Rules.

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE***

**Rule 1007. Lists, Schedules and Statements; Time
Limits**

1 (a) LIST OF CREDITORS AND EQUITY SECURITY
2 HOLDERS.

3 (1) *Voluntary Case.* In a voluntary case, the debtor
4 shall file with the petition a list containing the name and
5 address of each ~~creditor unless the petition is accompanied by~~
6 ~~a schedule of liabilities~~ entity included or to be included on
7 Schedules D, E, F, G, and H as prescribed by the Official
8 Forms.

9 (2) *Involuntary Case.* In an involuntary case, the
10 debtor shall file within 15 days after entry of the order for
11 relief, a list containing the name and address of each ~~creditor~~
12 ~~unless a schedule of liabilities has been filed~~ entity included

*New material is underlined; matter to be omitted is lined through.

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13 or to be included on Schedules D, E, F, G, and H as
14 prescribed by the Official Forms.

15 * * * * *

16 (c) TIME LIMITS. In a voluntary case, the ~~The~~
17 schedules and statements, other than the statement of
18 intention, shall be filed with the petition ~~in a voluntary case,~~
19 ~~or if the petition is accompanied by a list of all the debtor's~~
20 ~~creditors and their addresses,~~ within 15 days thereafter, except
21 as otherwise provided in subdivisions (d), (e), and (h) of this
22 rule. In an involuntary case the list in subdivision (a)(2), and
23 the schedules and statements, other than the statement of
24 intention, shall be filed by the debtor within 15 days after
25 entry of the order for relief. ~~Schedules~~ Lists, schedules, and
26 statements filed prior to the conversion of a case to another
27 chapter shall be deemed filed in the converted case unless the
28 court directs otherwise. Any extension of time for the filing
29 of the schedules and statements may be granted only on

30 motion for cause shown and on notice to the United States
31 trustee and to any committee elected under § 705 or appointed
32 under § 1102 of the Code, trustee, examiner, or other party as
33 the court may direct. Notice of an extension shall be given to
34 the United States trustee and to any committee, trustee, or
35 other party as the court may direct.

36 * * * * *

37 (g) PARTNERSHIP AND PARTNERS. The general
38 partners of a debtor partnership shall prepare and file the list
39 required under subdivision (a), schedules of the assets and
40 liabilities, schedule of current income and expenditures,
41 schedule of executory contracts and unexpired leases, and
42 statement of financial affairs of the partnership. The court
43 may order any general partner to file a statement of personal
44 assets and liabilities within such time as the court may fix.

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COMMITTEE NOTE

Notice to creditors and other parties in interest is essential to the operation of the bankruptcy system. Sending notice requires a convenient listing of the names and addresses of the entities to whom notice must be sent, and virtually all of the bankruptcy courts have adopted a local rule requiring the submission of a list of these entities with the petition and in a particular format. These lists are commonly called the “mailing matrix.”

Given the universal adoption of these local rules, the need for such lists in all cases is apparent. Consequently, the rule is amended to require the debtor to submit such a list at the commencement of the case. This list may be amended when necessary. *See* Rule 1009(a).

The content of the list is described by reference to Schedules D through H of the Official Forms rather than by reference to creditors or persons holding claims. The cross reference to the Schedules as the source of the names for inclusion in the list ensures that persons such as codebtors or nondebtor parties to executory contracts and unexpired leases will receive appropriate notices in the case.

While this rule renders unnecessary, in part, local rules on the subject, this rule does not direct any particular format or form for the list to take. Local rules still may govern those particulars of the list.

Subdivision (c) is amended to reflect that subdivision (a)(1) no longer requires the debtor to file a schedule of liabilities with the petition in lieu of a list of creditors. The filing of the list is mandatory, and subdivision (b) of the rule requires the filing of schedules. Thus, subdivision (c) no longer needs to account for the possibility that the debtor can delay filing a schedule of liabilities when the petition is accompanied by a list of creditors. Subdivision

(c) simply addresses the situation in which the debtor does not file schedules or statements with the petition, and the procedure for seeking an extension of time for filing.

Other changes are stylistic.

Rule 3004. Filing of Claims by Debtor or Trustee

1 If a creditor ~~fails to file~~ does not timely file a proof of
2 claim under Rule 3002(c) or 3003(c), ~~on or before the first~~
3 ~~date set for the meeting of creditors called pursuant to §~~
4 ~~341(a) of the Code~~, the debtor or trustee may ~~do so in the~~
5 ~~name of the creditor~~, file a proof of the claim within 30 days
6 after expiration of the time for filing claims prescribed by
7 Rule 3002(c) or 3003(c), whichever is applicable. The clerk
8 shall forthwith ~~mail~~ give notice of the filing to the creditor,
9 the debtor and the trustee. ~~A proof of claim filed by a creditor~~
10 ~~pursuant to Rule 3002 or Rule 3003(c), shall supersede the~~
11 ~~proof filed by the debtor or trustee.~~

COMMITTEE NOTE

The rule is amended to conform to § 501(c) of the Code. Under that provision, the debtor or trustee may file proof of a claim if the creditor fails to do so in a timely fashion. The rule previously authorized the debtor and the trustee to file a claim as early as the day after the first date set for the meeting of creditors under § 341(a). Under the amended rule, the debtor and trustee must wait until the creditor's opportunity to file a claim has expired. Providing the debtor and the trustee with the opportunity to file a claim ensures that the claim will participate in any distribution in the case. This is particularly important for claims that are nondischargeable.

Since the debtor and trustee cannot file a proof of claim until after the creditor's time to file has expired, the rule no longer permits the creditor to file a proof of claim that will supersede the claim filed by the debtor or trustee. The rule leaves to the courts the issue of whether to permit subsequent amendment of such proof of claim.

Other changes are stylistic.

**Rule 3005. Filing of Claim, Acceptance, or Rejection by
Guarantor, Surety, Indorser, or Other Codebtor**

- 1 (a) FILING OF CLAIM. If a creditor does not timely file ~~has~~
- 2 ~~not filed~~ a proof of claim under ~~pursuant to~~ Rule 3002 or
- 3 3003(c), an entity that is or may be liable with the debtor to
- 4 that creditor, or who has secured that creditor, may, within 30
- 5 days after the expiration of the time for filing claims

15 * * * * *

The rule is amended to delete the last sentence of subdivision (a). The sentence is unnecessary because if a creditor has filed a timely claim under Rule 3002 or 3003(c), the codebtor cannot file a proof of such claim. The codebtor, consistent with § 501(b) of the Code, may file a proof of such claim only after the creditor's time to file has expired. Therefore, the rule no longer permits the creditor to file a superseding claim. The rule leaves to the courts the issue of whether to permit subsequent amendment of the proof of claim.

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The amendment conforms the rule to § 501(b) by deleting language providing that the codebtor files proof of the claim in the name of the creditor.

Other amendments are stylistic.

**Rule 4008. Discharge and Reaffirmation Hearing
Filing of Reaffirmation Agreement**

1 A reaffirmation agreement shall be filed not later than 30
2 days after the entry of an order granting a discharge or
3 confirming a plan in a chapter 11 reorganization case of an
4 individual debtor. The court, for cause, may extend the time,
5 and leave shall be freely given when justice so requires. Not
6 ~~more than 30 days following the entry of an order granting or~~
7 ~~denying a discharge, or confirming a plan in a chapter 11~~
8 ~~reorganization case concerning an individual debtor and on~~
9 ~~not less than 10 days notice to the debtor and the trustee, the~~
10 ~~court may hold a hearing as provided in § 524(d) of the Code.~~
11 ~~A motion by the debtor for approval of a reaffirmation~~
12 ~~agreement shall be filed before or at the hearing.~~

COMMITTEE NOTE

The rule is amended to establish a deadline for filing reaffirmation agreements. The Code sets out a number of prerequisites to the enforceability of reaffirmation agreements. Among those requirements are that the agreements be entered into prior to the discharge and that they be filed with the court. Since the parties must make their agreement prior to the entry of the discharge, they will have at least 30 days to file the agreement with the court. Requiring the filing of reaffirmation agreements by a certain deadline also serves to inform the court of the need to hold a hearing under § 524(d) whenever the agreement is not accompanied by an appropriate declaration or affidavit from counsel for the debtor.

The rule allows any party to the agreement to file it with the court. Thus, whichever party has a greater incentive to enforce the agreement usually will file it. In the event that the parties fail to timely file the reaffirmation agreement, the rule grants the court broad discretion to permit a late filing.

The rule also is amended by deleting the provisions formerly in the rule regarding the timing of the reaffirmation and discharge hearing. Instead, the rule leaves discretion to the courts to set the hearing at a time appropriate for the particular circumstances presented in the case and consistent with the scheduling needs of the parties.

Rule 7004. Process; Service of Summons, Complaint

1 (a) SUMMONS; SERVICE; PROOF OF SERVICE

2 (1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b),
3 (c)(1), (d)(1), (e)-(j), (l), and (m) F.R.Civ.P. applies in
4 adversary proceedings. Personal service ~~under~~ pursuant to
5 Rule 4(e)-(j) F.R.Civ.P. may be made by any person at least
6 18 years of age who is not a party, and the summons may be
7 delivered by the clerk to any such person.

8 (2) The clerk may sign, seal, and issue a summons
9 electronically by putting an “s/” before the clerk’s name and
10 including the court’s seal on the summons.

11 * * * * *

COMMITTEE NOTE

This amendment specifically authorizes the clerk to issue a summons electronically. In some bankruptcy cases the trustee or debtor in possession may commence hundreds of adversary proceedings simultaneously, and permitting the electronic signing and sealing of the summonses for those proceedings increases the efficiency of the clerk’s office without any negative impact on any party. The rule only authorizes electronic issuance of the summons.

It does not address the service requirements for the summons. Those requirements are set out elsewhere in Rule 7004, and nothing in Rule 7004(a)(2) should be construed as authorizing electronic service of a summons.

Rule 9006. Time

(f) ADDITIONAL TIME AFTER SERVICE BY MAIL OR UNDER RULE 5 (b)(2)(C) or (D) F.R.CIV.P. When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service service of a notice or other paper and the notice or paper other than process is served and that service is by mail or under Rule 5 (b)(2)(C) or (D) F. R. Civ. P., three days shall be are added to after the prescribed period.

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COMMITTEE NOTE

Rule 9006(f) is amended, consistent with a corresponding amendment to Rule 6 (e) of the F.R. Civ. P., to clarify the method of counting the number of days to respond after service either by mail or under Civil Rule 5(b)(2)(C) or (D). Three days are added after the

prescribed period expires. If the prescribed period is less than eight days, intervening Saturdays, Sundays, and legal holidays are excluded from the calculation under Rule 9006(a). Some illustrations may be helpful.

Assuming that there are no legal holidays and that a response is due in seven days, if a paper is filed on a Monday, the seven-day response period commences on Tuesday and concludes on Wednesday of the next week. Adding three days to the end of the period would take one to Saturday. The response day would be the following Monday, two weeks after the filing of the initial paper. If the paper is filed on a Tuesday, the seven-day response period would end on the following Thursday, and the response time would also be the following Monday. If the paper is mailed on a Wednesday, the seven-day period would expire nine days later on a Friday. The response would again be due on the following Monday. If the paper is mailed on a Thursday, however, the seven-day period ends on Monday, eleven days after the mailing of the service because of the exclusion of the two intervening Saturdays and Sundays. The response is due three days later on the following Thursday. If the paper is mailed on a Friday, the seven-day period would conclude on a Tuesday, and the response is due three days later on a Friday.

No other change in the system of counting time is intended.

Other changes are stylistic.

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